

REMARKS

Reconsideration of the present application is respectfully requested in view of the following remarks. Prior to entry of this response, Claims 11-18 were pending in the application, of which Claims 11, 15, 16, and 18 are independent. In the Final Office Action dated September 9, 2005, Claims 11-18 were rejected under 35 U.S.C. § 103(a). Following this response, Claims 11-18 remain in this application. Applicants hereby address the Examiner's rejections in turn.

I. Change to Attorney Docket Number

Please note that the Attorney Docket Number for this application is now **14917.0154USU2/MS300309.01**.

II. Rejection of the Claims Under 35 U.S.C. § 103(a)

In the Final Office Action dated September 9, 2005, the Examiner rejected Claims 11-18 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,801,717 ("*Engstrom*") in view of what the Examiner considers to be well known in the art. Applicants respectfully traverse this rejection with regards to Claims 11 and 15. Claims 16 and 18 have been amended to further define and clarify the invention, and Applicants respectfully submit that the amendments overcome this rejection of Claims 16 and 18 and add no new matter.

Regarding independent Claims 11 and 15, in the Final Office Action dated September 9, 2005, the Examiner stated that *Engstrom* "fails to explicitly teach the use of said display device interface for the merging of display information received from the primary presentation surface and the overlay primary surface." (See Final Office Action,

page 3, lines 12-14.) To overcome *Engstrom's* deficiencies, the Examiner merely stated that "it would have been well known and obvious to one skilled in the art, at the time of the applicant's inventions, to use said display interface and Hal as the receiving element for display information is stored, before said display information could be presented via display hardware, because it is conventional that display hardware requires a means (i.e. display device interface and HAL) by which to interface with a computer system, in which the display hardware is respectively housed." (See Final Office Action, page 3, lines 15-21.) As a result, Applicant respectfully suggest that the Examiner has failed to make a *prima facie* case of obviousness. In order to make a *prima facie* case of obviousness, the Examiner must set forth prior art which teach or suggest every claim limitation. (See MPEP § 2143.) There is nothing in the prior art cited by the Examiner that discloses at least "a display interface driver for ... merging the received display information, and transferring the merged information to the display device", as recited by Claim 11. Independent Claim 15 includes a similar recitation. Accordingly, independent Claims 11 and 15 each patentably distinguish the present invention over the cited art, and Applicants respectfully request withdrawal of this rejection of Claims 11 and 15.

If the Examiner continues to rely on this unsupported contention, Applicants respectfully request the Examiner to provide support. See, In re Zurko, 258 F.3d 1379, 59 U.S.P.Q.2d 1693 (Fed. Cir. 2001) (holding that the USPTO must point to some concrete evidence in the record to support core factual findings in a determination of patentability); Memorandum by Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy (February 21, 2002)(stating that it is never appropriate to rely on

common knowledge without evidentiary support as sole or principal evidence on which to base rejection); 37 C.F.R. § 1.104 (providing that when a rejection in an application is based on facts within the personal knowledge of an Examiner, the data should be stated as specifically as possible, *and the facts must be supported*, when called for by the applicant, by an affidavit from the Examiner); MPEP § 2144.03 (providing that the Examiner may only take official notice of facts outside of the record which are capable of instant and unquestionable demonstration as being "well-known" in the art and, if the Applicant traverses such an assertion, the Examiner *should cite a reference* in support of his or her position.).

Regarding independent Claims 16 and 18, amended Claim 16 is patentably distinguishable over the cited art for at least the reason that it recites, for example, "wherein the presentation flipping chain and the overlay flipping chain exist at the same time for at least a portion of their respective existences." Amended Claim 18 includes a similar recitation.

In contrast, *Engstrom* at least does not teach or suggest the aforementioned recitation. For example, *Engstrom* discloses using overlay surfaces along with the display flipping chain. In *Engstrom*, however, putting those overlay surfaces into a second flipping chain used in parallel with a primary flipping chain is not suggested or disclosed. Moreover, the Examiner stated that it "is further noted that the respective claim language does not limit said chains to having to exist simultaneously." (See Final Office Action, page 6, lines 2-4.) Consequently, Applicants respectfully submit that *Engstrom* at least do not disclose or suggest "wherein the presentation flipping chain and the overlay flipping chain exist at the same time for at least a portion of their

respective existences", as recited by amended Claim 16. Amended Claim 18 includes a similar recitation. Accordingly, independent Claims 16 and 18 each patentably distinguish the present invention over the cited art, and Applicants respectfully request withdrawal of this rejection of Claims 16 and 18.

Dependent Claims 12-14 and 17 are also allowable at least for the reasons described above regarding independent Claims 11 and 16, and by virtue of their respective dependencies upon independent Claims 11 and 16. Accordingly, Applicants respectfully request withdrawal of this rejection of dependent Claims 12-14 and 17.

III. Conclusion

Applicants respectfully request that this Amendment After Final be entered by the Examiner, placing the claims in condition for allowance. Applicants respectfully submit that the proposed amendments of the claims do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner, since all of the elements and their relationships claimed were either earlier claimed or inherent in the claims as examined. Therefore, this Amendment should allow for immediate action by the Examiner.

Finally, Applicants respectfully submit that the entry of the Amendment would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.

In view of the foregoing remarks, Applicants respectfully submit that the claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicants therefore request the entry of

this Amendment, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.


In view of the foregoing, Applicants respectfully submit that the pending claims, as amended, are patentable over the cited references. The preceding arguments are based only on the arguments in the Official Action, and therefore do not address patentable aspects of the invention that were not addressed by the Examiner in the Official Action. The claims may include other elements that are not shown, taught, or suggested by the cited art. Accordingly, the preceding argument in favor of patentability is advanced without prejudice to other bases of patentability. Furthermore, the Final Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Final Office Action.

Please grant any extensions of time required to enter this amendment and charge any additional required fees to our Deposit Account No. 13-2725.

Respectfully submitted,

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By: _____


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